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Nichols, Effingham H. et al.
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Before the Secretary of the Interior

IN THE MATTER OF

THE PETITION OF THE CENTRAL BRANCH
UNION PACIFIC RAILROAD CO.

Bearing date Feb. 8, 1869.

AFFIDAVITS OF FACTS

Showing good faith, &c., of the following stockholders, viz:

• EFFINGHAM H. NICHOLS,

(*Treasurer C. B. U. P. R. R. Co.*)

WILLIAM C. WETMORE,

(*Counsellor-at-Law.*)

JOHN A. STEWART,

(*Prest. U. S. Trust Co.*)

HENRY DAY,

(*Counsellor-at-Law.*)

} OF NEW YORK.

AND

R. M. POMEROY,

(*President C. B. U. P. R. R. Co.*)

WILLIAM CLAFLIN,

(*Governor of Massachusetts.*)

NATH'L THAYER,

(*Banker.*)

JOHN MANNY,

(*Merchant.*)

A. H. BATCHELLER,

(*Merchant.*)

} OF MASSACHUSETTS.

Gibson Brothers, Printers.

Before the Secretary of the Interior.

<p>IN THE MATTER OF THE PETITION OF THE CENTRAL BRANCH UNION PA- CIFIC RAILWAY COMPANY, BEARING DATE FEB. 8, 1869.</p>	}	<p>AFFIDAVITS OF FACTS, Showing good faith, &c.</p>
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City and County of New York, ss :

EFFINGHAM H. NICHOLS, of the city of New York, counsellor-at-law, being duly sworn, doth depose and say :

1. That he is one of the directors and he is the treasurer of the Central Branch Union Pacific Railroad Company ; that he has been such director since May, 1865, and such treasurer since the 30th day of November, 1865 ; that the association of parties now constituting the directors and principal stockholders of the Central Branch Union Pacific Railroad Company was formed in May, 1865 ; that at that time the Hon. S. C. Pomeroy, then and still United States Senator from the State of Kansas, was president of said company, and at the time of the formation of said association he was present, and laid before the parties the inducements provided by law for entering upon the undertaking, representing that the road would be and was by law an *integral part* and *branch* of the Union Pacific railroad, and would receive its share of the through travel and transportation ; that the law was then carefully examined by counsel, and the statement that said road was an *integral part* and a *branch* of the Union Pacific railroad was found in all respects to be true, and the capital stock was thereupon in good faith subscribed.

2. That a contract for the construction of the first one hundred miles of said railroad was made on the 9th day of May, 1865 ; that by mutual understanding and agreement

no material work was commenced under said contract until the month of July following, that is to say, until the expiration of one year from the passage of the Pacific Railroad act of July 2, 1864; that at the time of the making of said contract the entire capital stock of said company was subscribed, viz, \$1,000,000; that during the summer and fall of that year (1865) nearly *four hundred and eighty thousand dollars* thereof was paid into the treasury in cash; that on or about the month of January, 1866, the further amount of about *one hundred and twenty thousand dollars* was paid into the treasury in cash; that since that time the *residue* of said capital stock, viz, *four hundred thousand dollars*, excepting about twenty-six thousand eight hundred dollars, has been paid into the treasury in cash; that said twenty-six thousand eight hundred dollars is due and payable from stockholders, who, by reason of sickness or some other cause, have not yet paid the same; that no part of said amounts have ever been repaid to said stockholders, but the whole amount thereof, now amounting to upwards of one million of dollars, has been disbursed and expended in and upon said road in the construction and equipment thereof; that one million six hundred thousand dollars of six per cent. currency, United States bonds, have been received of the Treasurer of the United States, and the same have been sold at the highest market price that could be procured for the same, being an average of about ninety-nine per cent., and the proceeds thereof have been expended in the construction of said railroad; that in addition to these amounts about twelve hundred of the first-mortgage bonds of said company have been disposed of, and the proceeds thereof likewise used and disbursed in the construction and equipment of said road and other expenses; that in addition to these amounts more than sixty-eight thousand dollars have likewise been disbursed; that these facts are all matters within the knowledge of this deponent, excepting that the four hundred and eighty thousand dollars named, and a portion of the proceeds of said first-mortgage bonds mentioned, were disbursed by the predecessor in office of this deponent.

3. That the deponent is one of the stockholders in said company ; that he is a holder of one hundred thousand dollars of said capital stock, for which he has paid one hundred thousand dollars in cash ; that his subscription was made in *good faith*, and on the faith that this road was a *branch* of the Union Pacific railroad, and an *integral part* thereof, and was to have *connection* therewith ; that he verily believes that all of said subscriptions were made in such faith and in like belief, and this deponent avers and declares that *such connection was all that gave the road value in the estimation of capitalists.*

4. That pursuant to the requirements of the seventh section of the Pacific Railroad act of July 1, 1862, the Eastern Division Company did designate the "*general route*" of the road which it was authorized to construct, called "*the road through Kansas,*" subject to its statute locations, and the Central Branch Company did designate the "*general route*" of its road as an extension of the Hannibal and St. Joseph railroad, and each of said companies did "file a map of the "same in the Department of the Interior," the former on or about the 17th day of July, 1862, and the latter on the 27th day of June, 1863 ; that afterward, to wit, by the fifth section of the Pacific Railroad act of July 2, 1864, "the time "for designating the general route of said railroad and of "filing the map of the same," was extended "*one year,*" that during said year, to wit, on the first day of July, 1865, being the last day of said year, the Eastern Division Company filed a *new* map of general location, *reaffirming their purpose and design of connecting the said road with the Union Pacific railroad at the one hundredth meridian* ; that said map was duly signed by the chief engineer of said company, and duly certified by its president, by a certificate dated June 23, 1865, as a map of the general route of the Union Pacific Railway, Eastern Division, and as having been *adopted and approved* by the railway company.

5. That thereupon, the year having expired, and the Eastern Division having not only *not changed* their Western terminus, but, on the contrary, *reaffirmed their purpose to*

connect with the Union Pacific, at its initial point on the one-hundredth meridian, and in full faith that the law would not be changed, active operations were at once commenced for the construction of the Central Branch Union Pacific railroad, with the design and purpose, as provided by law, of connecting with "*the road through Kansas*," at a point about one hundred miles westward of Atchison, near the valley of the Republican Fork, and with it uniting with the Union Pacific at the one hundredth meridian; that in the month of July following, that is, July, 1866, being the time of the passage of the act of July 3, 1866, and known as the Smoky Hill bill, such progress had been made in the construction and equipment of said road that this deponent, on making a visit to said road in the month of November following, found that forty-seven miles thereof were entirely completed and equipped, and about thirty miles were graded, and a portion of the ties and iron laid thereon, and that, as will be seen by the report of the Secretary of the Interior, dated November, 1866, an extract from which is hereto annexed, great progress had been made in and toward the completion and fulfilment of said contract.

6. That said act of July 3, 1866, was passed not only *without the assent* of the Central Branch Company, but *against their solemn protest*, duly presented through the Hon. Alex'r H. Rice, and filed on the 22d day of June, 1866.

7. That the Eastern Division Company filed its assent to the conditions of the Pacific Railroad act on the 15th day of November, 1862, and the Hannibal and St. Joseph Railroad Company on the 16th day of June, 1863; that, by a joint resolution of Congress, the time within which the Eastern Division Company was to complete the first one hundred miles of "*the road through Kansas*" was extended to the 27th of June, 1866, and each succeeding one hundred miles in each succeeding year thereafter, until the whole shall be completed; that the first one hundred miles of said road was completed within the time required, but, although the 27th day of June, 1867, has long since elapsed, *the second 100 miles of said road has not yet been completed*, nor

has any part of the residue of said road yet been constructed, or any work done thereon.

8. That the original design and purpose of the Central Branch was to connect their said road with "*the road through Kansas*" in the direction of the first bend of the Republican Fork, but so soon as the act of 1866 was passed the extreme westerly end of said road was slightly changed, with the view of shortening the distance, so as to run in the direction of the second or what is known as the "Great Bend" of the Republican Fork, still observing, however, the "*general direction and route*" of "*the road through Kansas*."

9. That the distance from the point where the Central Branch would have connected with "*the road through Kansas*," in case the road had been constructed in accordance with the original plan, and the point where "*the road through Kansas*" would have united with the main trunk at the 100th meridian, is not less than 220 miles; that this information is obtained from an examination of the Government maps, and from O. B. Gunn, Esq., the chief engineer (and now superintendent) of said Central Branch Company.

10. That the meridian of Fort Riley is distant in a direct line west from Atchison about $87\frac{1}{2}$ miles.

11. That a large portion of said road has been comparatively difficult of construction; that the country through which it passes is high rolling prairie; that the line of said road is not along a valley, but on the contrary, runs, as it were, across the grain of the country, cutting the streams at right angles; that the first section of said road required much excavation and much filling to effect a proper grade; that said road has been, and is now, entirely completed, and that from personal observation he believes it to have been constructed in a first-class manner; that all ties are of hard wood—in short, all the materials now in construction are of the very best quality; that with but few exceptions all the bridges and culverts are constructed of solid stone masonry; that the bridge across the Big Blue is about four hundred and fifty feet in length, and reputed to be the finest bridge in the State of Kansas; that said road runs

through a country for the most part uninhabited and unoccupied ; that said road, terminating as it now does, is of no real value to the stockholders or Government, but he verily believes that if the same was extended to a connection with the Union Pacific, as provided by the *sixteenth section* of the Pacific Railroad act of 1864, the funds invested and to be invested by the bondholders and stockholders would be *safe*, and in due time both *principal and interest repaid*.

12. That the first-mortgage bonds of this company were issued in *good faith*, and in the supposition that the Central Branch railroad was an *integral* part of the Pacific railroad, and would be entitled to its appropriate share of the through travel and transportation, and that from the *earnings* to be derived therefrom the interest upon its said first-mortgage bonds would be promptly met and paid ; that owing to the fact of said road not being connected with the main trunk, said road has not yet paid its ordinary running expenses ; that in consequence thereof the stockholders have advanced from their private resources the funds with which to take up the coupons of said first-mortgage bonds, which have matured from time to time, to their great embarrassment, and that unless said road shall connect with the main trunk, the company will be unable to meet the maturing interest on said first-mortgage bonds, and that thereby the interests of the Government and the interests of the stockholders will be greatly jeopardized ; that since this deponent became the treasurer of said company, and the present stockholders took upon themselves the management of the affairs of said company, all its affairs and transactions have been conducted in *good faith* and in reliance on the good faith of the Government, and that all the representations made by said company have been made in good faith. And this deponent further says that the interest on said first-mortgage bonds matures on the 1st days of May and November in each year, and that the stockholders have again resolved to raise the requisite funds and take up the coupons maturing May 1, 1869, and that they have so resolved *trusting to the good faith of the Government*, and

verily believing that the Administration will see to it that the law relating to *their rights will be faithfully executed without partiality or favor*; that the subscriptions to the capital stock of said company were made on the *belief* that the Central Branch Company was a *branch and integral part* of the Pacific railroad; that the first-mortgage bonds were issued and executed on *such belief*; that a portion of the lands acquired by said company under the Pacific Railway laws were sold and purchased on *such belief*; that the requisite energy was put forth, the necessary capital advanced, on *such belief*, and that this deponent still believes that the Central Branch Company, having now completed its road in all respects as required by law, is not only “*authorized*” but “*entitled*” to continue and extend its own road to a connection with its main trunk at the 100th meridian, and for and in aid of the construction thereof, to receive bonds and subsidies.

EFFM H. NICHOLS.

Sworn before me, this 5th day of April, 1869.

G. B. WOOD,
Notary Public, N. Y.

Extract from the report of the Secretary of the Interior, dated November, 1866 :

“The Atchison and Pike’s Peak Railroad Company have completed forty miles of their road west from Atchison. The company report that they have on hand six locomotives, two passenger, one baggage and express, fourteen box, and thirty-three flat cars, three tanks, and two turn-tables, &c., with a machine-shop and a blacksmith-shop complete, the former being built of stone masonry, and covered with an iron roof, and they are now engaged in the erection of a round-house. The road is generally built in a very substantial manner; nearly all the bridges and culverts are of the best quality of solid masonry. The larger span-bridges are of the Howe-truss pattern. The road-bed for the next thirty miles is nearly ready for the superstructure. The ties, iron chairs, and spikes for the same are on hand, or *in transitu*. The company report an expenditure

“in the construction and equipment of the road of two millions three hundred and seven thousand six hundred and fifty dollars. They confidently expect that sixty miles of road will be completed by the first of January next.”

City and County of New York, ss :

WILLIAM C. WETMORE, of the city of New York, counsellor-at-law, being duly affirmed, doth declare and say, that he is the Vice-President of the Central Branch Union Pacific Railroad Company, and a stockholder in said company to the amount of six hundred and sixty-six shares, for which he has paid sixty-six thousand six hundred dollars in cash ; that no part or portion thereof has ever been repaid to him ; that he has read the foregoing affidavit of Effingham H. Nichols, Esq., and is himself personally familiar with most of the facts therein stated, and verily believes all the facts therein stated to be true ; that his subscription to the capital stock was made on the faith of the statutes of the United States known as the Pacific Railroad laws, and upon the faith that a connection with the Union Pacific was therein guaranteed, with the usual aid in lands and bonds, and *that under no circumstances would he have ever taken part in such enterprise except upon such faith.*

W. C. WETMORE.

Affirmed before me, this 9th day of April, 1869.

C. B. WOOD,

Notary Public, N. Y.

City and County of New York, ss :

JOHN A. STEWART, of the city of New York, being duly sworn, doth depose and say, that he is one of the stockholders and a director in the Central Branch Union Pacific Railroad Company ; that he has read the affidavit of Effingham H. Nichols, Esq., treasurer of said company ; that he believes all the matters in said affidavit of Mr. Nichols to be true. He further states that he became a stockholder in

said company on the *full faith* and conviction that the said road was by law a *branch* of the Pacific railroad, and that the same would unite with "*the road through Kansas*" at a point about one hundred miles from Atchison, and where the roads of the said two companies were by law to form a junction; that in his estimation such connection gave the highest and principal value to the Central Branch as an investment; that the Central Branch was located and built with reference to such connection until the said Eastern Division Company was authorized to designate a new and different route for itself. He further states that he visited said road in the fall of 1866, and that then forty-seven (47) miles of said road were built and equipped, and that the said portion of said road was built, as he believes, in a good and substantial manner. And further states that he believes that all the moneys mentioned by Mr. Nichols have been expended in the construction and equipment of said road, and in full reliance upon the right of said company, under the laws, either to connect with "*the road through Kansas*" at the point where the two roads were required by law to form a junction, or, after said route was changed, to continue its road to a connection with the Union Pacific railroad at the 100th meridian upon the same terms and conditions as are provided for the construction of said Pacific railroad.

JOHN A. STEWART.

Sworn before me this 9th day of April, 1869.

G. B. WOOD,

Notary Public, N. Y.

City and County of New York, ss:

HENRY DAY, of the city of New York, counsellor-at-law, being duly sworn, doth depose and say, that he is one of the stockholders and a director in the Central Branch Union Pacific Railroad Company; that he has read the affidavit of Effingham H. Nichols, Esq., treasurer of said company, hereto annexed; that he believes all the matters stated in

said affidavit of Mr. Nichols to be true. He further states that he became a stockholder in said company on the full faith and conviction that the said road was by law a branch of the Pacific railroad, and that the same would unite with "*the road through Kansas*" at a point about one hundred miles from Atchison, and where two roads were required by law to form a junction; that in his estimation such connection gave the principal and only value to the said Central Branch as an investment; that the Central Branch was located and built with reference to such connection until the route of said Eastern Division was changed by Congress. He further states that he visited said road in the spring of 1866, and that then twenty (20) miles of said road were built and equipped, and that the said portion of said road was built, as he believes, in a good and substantial manner. And he further states that he believes that all the moneys mentioned by Mr. Nichols have been expended in the construction and equipment of said road, and in full reliance upon the right of the said company, under the laws, either to connect with "*the road through Kansas*" at the junction referred to, or, after said route was changed, to *continue its road* to a connection with the Union Pacific railroad at the 100th meridian upon the same terms and conditions as are provided for the construction of said Pacific railroad.

HENRY DAY.

Sworn to before me this 9th day of April, 1869.

DANIEL LORD, JR.,
Notary Public, City of New York.

COMMONWEALTH OF MASSACHUSETTS, }
County of Suffolk, City of Boston, } ss:

The undersigned, residents of the *city of Boston or vicinity*, being each duly sworn, do each for himself depose and say, that he is a *stockholder* in the Central Branch Union Pacific Railroad Company; that he has read, or heard read, the affidavit of Effingham H. Nichols, Esq., and verily be-

believes the same to be true; that his subscription to the capital stock of said company was made *on the faith* of the acts of Congress known as the Pacific Railroad laws, and *on the faith*, as therein provided, that the Central Branch was *to connect* with a road called in the law "*the road through Kansas*," at a point one hundred miles west from Atchison, where the two companies were required to form a junction; that said Central Branch was located and built with reference to such connection, until the route of said Eastern Division was changed by Congress, and that the whole thereof was built and completed in full reliance upon the *right* of said company, under the laws, either to *connect* with the said "*road through Kansas*," or, after the route of the Eastern Division was changed, to *continue and extend* its road to the main trunk at the 100th meridian, in accordance with the provisions of the 16th section of the Pacific Railroad act of 1864, that is to say, upon the same terms and conditions as are prescribed for the construction of the Union Pacific railroad, and *that under no circumstances would he have ever taken part in such enterprise except on such faith.*

R. M. POMEROY,
WILLIAM CLAFLIN,
N. THAYER,
JOHN T. MANNY,
A. H. BATCHELLER.

STATE OF MASSACHUSETTS, }
County of Suffolk, City of Boston, } ss.

Subscribed and sworn to, this thirteenth day of April, A. D. eighteen hundred and sixty-nine, by R. M. Pomeroy, William Claflin, N. Thayer, John T. Manny, and A. H. Batcheller, before me,

A. W. ADAMS,
Notary Public.

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